DECISION **NOT FOR PUBLICATION** IN WEST'S BANKRUPTCY REPORTER

Case: Eunice Swinson v. Coates & Lane, Inc. (In re Eunice Swinson), Adversary Proceeding No. 01-10165.

Decision: Decision re Jurisdictional Issue Remanded by District Court.

Date: July 27, 2004.

Summary: Despite dismissal of bankruptcy case the court retained jurisdiction over adversary proceeding and the court ought not relinquish such jurisdiction in the exercise of its discretion.

FILED AND ENTERED

JUL 27 2004

Denise H. Curtis, Clerk
U.S. Bankruptcy Court for D.C.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re	)	
	)	
EUNICE SWINSON,	)	Case No. 00-00507
	)	(Chapter 13)
Debtor.	)	
	)	
	)	
EUNICE SWINSON,	)	
	)	
	)	
Plaintiff,	)	
	)	Adversary Proceeding No.
v.	)	01-10165
	)	
COATES & LANE, INC., also known as COATES & LANE ENTERPRISES, INC.,	)	
	)	
Defendant.	)	

DECISION RE JURISDICTIONAL ISSUE REMANDED BY DISTRICT COURT

By an order filed on May 20, 2004, the district court has directed this court to address the issue of jurisdiction over this adversary proceeding after dismissal of the underlying bankruptcy case. The court concludes that jurisdiction persists, and the only sound exercise of discretion is to continue to exercise that jurisdiction.

I

The debtor Swinson commenced her bankruptcy case, Case No. 00-00507, on March 15, 2000, as a case under chapter 13 of the Bankruptcy Code, but on the motion of the debtor the case was converted to a case under chapter 11 of the Bankruptcy Code on April 25, 2000. No party in interest ever filed a motion to

dismiss the case as a chapter 11 case based on bad faith. As a debtor-in-possession under 11 U.S.C. §§ 1101, authorized by 11 U.S.C. § 1107(a) and 1108 to pursue claims of the estate, she later commenced this adversary proceeding against Coates & Lane, Inc. ("Coates & Lane") on September 26, 2001, seeking recoveries against Coates & Lane as its former landlord. The bankruptcy court held a trial of the matter on September 10 and 11, 2002. The trial involved several factual and legal issues typical of a landlord-tenant dispute (including a constructive eviction defense raised by Coates & Lane and claims for destruction of personal property by Swinson). On December 31, 2002, the bankruptcy court filed lengthy and (except for the issue of the amount of reasonable attorney's fees) thorough proposed rulings (proposed findings of fact and conclusions of law) under 28 U.S.C. § 157(c)(2) and F.R. Bankr. P. 9033 for the de novo consideration of the district court.

On March 13, 2003, the clerk transmitted to the clerk of the district court the bankruptcy court's proposed rulings, together with the designated record for addressing the defendant's objections.

Back in the bankruptcy court, on July 15, 2003, the debtor's case was converted to one under chapter 13 of the Bankruptcy Code. Although no longer a debtor-in-possession, the debtor remained authorized to pursue her claims against Coates & Lane.

See 11 U.S.C. § 1304 (a debtor is authorized to operate his business) and § 1306(b) (a debtor shall remain in possession of all property of the estate except as provided in a confirmed plan or an order confirming a plan).

On August 22, 2003, the district court heard the objections of the parties to the bankruptcy court's proposed rulings, and took the matter under advisement.

On October 10, 2003, the chapter 13 trustee moved in the bankruptcy court to dismiss the bankruptcy case, alleging the debtor was ineligible for relief under chapter 13 of the Bankruptcy Code based on the debt limitations of 11 U.S.C. § 109(e) and based on the debtor's failure to prove that she had a regular income as required by § 109(e), and alleging that the debtor's case was thus being pursued in chapter 13 in bad faith. Swinson in turn moved for dismissal herself, and on October 20, 2003, the bankruptcy court dismissed the bankruptcy case on that motion with prejudice for 180 days pursuant to 11 U.S.C. § 109(g)(2), thus mooting the necessity of deciding whether dismissal with prejudice for 180 days was warranted based on the trustee's allegations of bad faith.

Had either party thought that dismissal of the underlying bankruptcy case warranted dismissal of the adversary proceeding, that party could have filed a motion in the district court for dismissal. Through a series of previous missteps, however,

Coates & Lane failed to receive notice of the dismissal of the case. Even though Coates & Lane held a modest claim against the estate for a security deposit, Swinson apparently viewed that claim as nonexistent because offset by her far larger rent claims against Coates & Lane, and never scheduled Coates & Lane as a creditor. In turn, Coates & Lane never filed a proof of claim in the bankruptcy case once it learned of its pendency, possibly out of fear that this would trigger treatment of Swinson's claims as core matters. See Statutory Comm. of Unsecured Creditors v. Motorola, Inc. (In re Iridium Operating LLC), 285 B.R. 822, 831-32 (S.D.N.Y. 2002) (adversary proceedings against a creditor that have traditionally been non-core are made core pursuant to the filing of a proof of claim by the creditor if the claims arise out of the same transaction).[1] Nor did Coates & Lane file a request with the clerk to be added to the mailing matrix. See LBR 2002-1(j). Accordingly, Coates & Lane never appeared on the mailing matrix (as would have occurred had it been scheduled, or filed a proof of claim, or filed a LBR 2002-1(j) request to receive notices). Accordingly, when the clerk caused the Bankruptcy Noticing Center to mail out the order of dismissal,

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[1] Indeed, Iridium Operating LLC goes further and notes that assertion by the creditor of a claim by way of counterclaim or setoff/recoupment can convert a debtor's claims to a core proceeding. Id. The parties here, however, never raised an issue regarding the propriety of the court's treating the debtor's claims as non-core, and the law of the case is that they must be treated as such.

Coates & Lane was not mailed a copy of the order.

The bankruptcy court was unaware that Coates & Lane was not on the mailing matrix. The undersigned bankruptcy judge was further unaware that the district court had not disposed of the pending objections to the bankruptcy court's proposed rulings, as the bankruptcy judge does not always learn of the disposition of such matters. Moreover, even if he had known that the objections had not been disposed of, he was aware that jurisdiction continues unless the trial court in the exercise of discretion determines not to exercise such jurisdiction, and that after the instant adversary proceeding had been fully tried, it would have been an abuse of discretion to dismiss it.

Coates & Lane does not affirmatively allege that it was unaware until after March 31, 2004 (when the district court ruled on the objections) that the case had been dismissed, but I will assume, without deciding, that such was the case.[2] Swinson obviously felt that jurisdiction had to be retained, and thus did not raise the issue with the district court. Accordingly, the district court was not advised of the dismissal of the bankruptcy case and it proceeded to address the pending objections to the

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[2] Coates & Lane states that it did not receive notice of the dismissal, but does not state when it learned that the case was dismissed. If it learned of the dismissal prior to March 31, 2004, it acquiesced in the district court's retention of jurisdiction, and ought not be entitled to raise the issue of jurisdiction only after the district court has overruled almost all of its objections.

bankruptcy court's proposed rulings without addressing the jurisdictional issue.

If Coates & Lane was of the view that a dismissal of the bankruptcy case would be a basis for dismissing the adversary proceeding, it should have taken steps to keep abreast of the bankruptcy case so that it could raise the issue with the district court upon dismissal occurring. Coates & Lane was certainly aware that it had not taken any of the steps discussed above (filing a proof of claim or a LBR 2002-1(j) request to be added to the mailing matrix) to ensure that it received notice from the bankruptcy clerk's office in the underlying bankruptcy case; and, if it is assumed that it did not learn of the dismissal until after the district court ruled, it obviously never tracked the bankruptcy docket to keep itself informed of any dismissal of the bankruptcy case.

On March 31, 2004, the district court entered its initial Order adopting the bankruptcy court's proposed rulings (except for a remand on the issue of fixing reasonable attorney's fees to be awarded Swinson). On April 5, 2004, the district court entered an amended order that corrected a reference to the statutory provision for Swinson's recovery of interest. The district court's amended order specifically awarded Swinson $83,213.50 in damages, less a setoff award to Coates & Lane of $10,500.00, for a total judgment award of $72,713.50 plus

interest in accordance with 28 U.S.C. § 1961 from the date of entry of the order, but remanded the question of reasonable attorney's fees to the bankruptcy court for revised proposed findings subject to de novo review by the district court.[3]

On May 7, 2004, Coates & Lane filed a motion to vacate the district court's amended order (and the order it amended) and to dismiss the proceeding, asserting that the underlying bankruptcy case had been dismissed and that the district court thus no longer had jurisdiction to enter a judgment against Coates & Lane. Simultaneously, Coates & Lane filed a motion to withdraw the district court's orders of March 31 and April 5, 2004,

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[3] The amended order thus left for later adjudication the claim for attorney's fees, but even left the $72,713.50 net damage claim adjudication subject to revision, and hence not a final appealable order. Under F.R. Civ. P. 54(b), such an order, adjudicating less than all the claims, terminates the action as to the claims adjudicated "only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment," and leaves the entire order "subject to revision . . . ." Rule 54(b) applies in this adversary proceeding. F.R. Bankr. P. 7054(a).

F.R. Civ. P. 54(d)(2) did not operate to make the Amended Order final: the attorney's fee claim is not governed by Rule 54(d)(2). The attorney's fee claim was instead "an element of damages to be proved at trial" within the contemplation of F.R. Civ. P. 54(d)(2)(A). Rule 54(d)(2) "does not . . . apply to fees recoverable as an element of damages, as when sought under the terms of a contract[.]". Advisory Committee Note (1993) to Rule 54(d)(2). The extent to which Rule 54(d)(2) could ever apply to a proceeding in the district court need not be addressed. See F.R. Bankr. P. 7054(a); LBRs 1001-1(a) and 7054-1.

Because the Amended Order was not a final order, interest would not accrue on the award to Swinson under 28 U.S.C. § 1961 until entry of a final judgment incorporating that award.

pending the outcome of resolution of the jurisdictional issue. On May 20, 2004, the district court entered an order directing that the jurisdictional issue be remanded to the bankruptcy court for its immediate consideration,[4] and directing that "the Court will withdraw its April 1, 2004 [sic][5] Order pending resolution of the jurisdictional issue."

II

As held in In re Porges, 44 F.3d 159, 162-63 (2d Cir. 1995):

> [D]ismissal of an underlying bankruptcy case does not automatically strip a federal court of jurisdiction over an adversary proceeding which was related to the bankruptcy case at the time of its commencement. The decision whether to retain jurisdiction should be left to the sound discretion of the bankruptcy court or the district court, depending on where the adversary proceeding is pending.

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[4] The district court's order of remand of May 20, 2004, has never been docketed in the adversary proceeding. Although a copy was received the undersigned bankruptcy judge, he assumed that the clerk's office of the district court was also formally transmitting the order to the clerk of the bankruptcy court, which would then docket the order in the adversary proceeding and transmit the order to him for action. Believing that to be the orderly way to handle the matter, he set it to the side, awaiting its formal transmission from the clerk's office, and turned his attention to other pressing matters.

Upon receipt of a later order issued by the district court that directed the parties to file status reports, the bankruptcy judge inquired and learned that the district court's clerk office failed to transmit the order to the clerk of the bankruptcy court. He has accordingly proceeded immediately to address the jurisdictional issue without awaiting the formality of the order being received by the clerk of the bankruptcy court.

[5] The district court obviously intended to withdraw the Amended Order entered on April 5, 2004 (and the March 31, 2004 Order it amended as well).

Accord, Chapman v. Currie Motors, Inc., 65 F.3d 78, 80-82 (7th Cir. 1995); In re Querner, 7 F.3d 1199, 1201-02 (5th Cir. 1993); In re Carraher, 971 F.2d 327, 328 (9th Cir. 1992) (per curiam); In re Morris, 950 F.2d 1531, 1534 (11th Cir. 1992); In re Smith, 866 F.2d 576, 580 (3d Cir. 1989). Such continued exercise of jurisdiction over an adversary proceeding should turn on the same analysis as applies to a district court's continued exercise of jurisdiction over a "pendent or ancillary, or as is now called 'supplemental,'" claim following dismissal of all federal claims. Chapman, 65 F.3d at 80. Accord, Porges, 44 F.3d at 162-63; Querner, 7 F.3d at 120; Carraher, 971 F.2d at 328; Smith, 866 F.2d at 580. In making such a determination, the trial court must consider four factors: judicial economy, convenience to the parties, fairness, and comity. See, e.g., Querner, 7 F.3d at 120, citing, Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988); Porges, 44 F.3d at 163.

The following are illustrative of instances in which a court of appeals has upheld a trial court's decision to continue to exercise jurisdiction over an adversary proceeding after dismissal of the underlying bankruptcy case:

- Morris, 950 F.2d at 1535: case had been pending for four years and was ready for trial;
- Porges, 44 F.3d at 163: the adversary proceeding had been fully tried by the bankruptcy court and an oral decision issued, awaiting only the filing of findings of fact and conclusions of law, and a judgment;

- Smith, 866 F.2d at 580: state law claims had been pending before bankruptcy court for four years, and the bankruptcy court had already heard the plaintiff's case regarding the claims; and

- Carraher, 971 F.2d at 328: proceedings had dragged on for six years; the bankruptcy court easily disposed of the claims on the basis of *res judicata* and it was "certainly no less efficient and convenient for the bankruptcy court to resolve this issue than to send it to the state courts."

These examples inexorably point to the conclusion, next addressed, that the only sound exercise of discretion would be to retain jurisdiction.[6]

III

Applying the four factors discussed above, it would be an abuse of discretion to dismiss this adversary proceeding.

First, **judicial economy** weighs heavily in favor of retained jurisdiction. See Chapman, 65 F.3d at 81 ("[W]hen a case has proceeded through one court system and is almost finished with there, the interest in judicial economy argues powerfully for keeping the case in that court system to the end rather than starting from scratch in a different system."). The adversary proceeding has been pending for almost three years; it was fully tried in the bankruptcy court in a two-day trial; the bankruptcy

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[6] In contrast to the foregoing examples, in Querner, 7 F.3d at 1202-1203, the trial court abused its discretion by retaining jurisdiction when, at the time of dismissal of the underlying bankruptcy case, the litigation had been initiated only recently, no significant action had been taken, and the claims were probate law claims, an arena in which state courts have obvious expertise.

court issued extensive proposed findings of fact and conclusions of law; a record of the trial (including transcripts) was prepared; the defendant's objections to the proposed rulings were briefed and argued in the district court; and the district court examined and ruled on the objections, suspending its ruling only while the jurisdictional issue is addressed. To start all over again in a state court would impose an unwarranted burden on that court. The only issue not yet resolved is that of reasonable attorney's fees, and the bankruptcy court is the most logical court to address those issues in the first instance because the matter was tried before it. Moreover, the bankruptcy court is well equipped to address that type of issue as it frequently passes on the reasonableness of fee applications in bankruptcy cases.

Second, **convenience to the parties** weighs in favor of retaining jurisdiction for the same reasons: it would be highly inconvenient to start all over again in a state court when the issues have already been fully tried and decided (except for the reasonable attorney's fee question) in the federal courts.

Third, **fairness** weighs in favor of retained jurisdiction. Swinson would have to incur additional attorney's fees and costs to pursue recovery against Coates & Lane in state court, and forcing the matter into state court would give the litigants a second bite at the apple on the aspects of the district court's

ruling with which they disagreed. Finally, Swinson would be delayed in obtaining a recovery she has already been pursuing for almost three years.

Fourth, **comity** weighs in favor of retention of jurisdiction. Although the issues presented were state law claims, the issues were mostly factual, and what legal issues were presented were relatively straightforward. There is no apparent state interest in having the resolution of the issues restricted to the state courts as might be the case were some novel state law question presented. Indeed, comity demands that the federal court not unload this litigation on a busy state court when the federal court has already largely disposed of the issues.

IV

Coates & Lane's motion to dismiss raises various arguments that are readily rejected.

A.

Coates & Lane points to the bankruptcy court's failure to retain jurisdiction over the adversary proceeding in its dismissal order. However, the bankruptcy case and the adversary proceeding are "two distinct proceedings." Morris, 950 F.2d at 1534. "Since two separate cases are involved, express retention over the adversary proceeding upon disposition of the related bankruptcy case is unnecessary." Id. Coates & Lane is correct that, upon dismissal of the bankruptcy case, the discretionary

decision regarding retention of jurisdiction lay with the district court where the de novo review of the bankruptcy court's proposed ruling was pending. The district court subsequently remanded the issue to this court for its consideration.

B.

Coates & Lane notes that the bankruptcy case was dismissed with prejudice. The dismissal with prejudice arose because the court dismissed the case on the debtor's motion following the filing of a motion for relief from the automatic stay. See 11 U.S.C. § 109(g)(2). Moreover, as already noted, dismissal of the bankruptcy case, whether with prejudice or not, does not destroy jurisdiction which existed at the time an adversary proceeding was commenced. See Chapman, 65 F.3d at 81 ("Ordinarily, when a case is within federal jurisdiction when filed, it remains there even if subsequent events eliminate the original basis for jurisdiction." [Citations omitted.]). Instead, any dismissal of the adversary proceeding turns on the trial court's discretionary exercise of the power to relinquish jurisdiction. Id.

C.

Coates & Lane points out that the debtor dismissed the underlying bankruptcy case after allegations of bad faith. However, the bankruptcy court never passed on those allegations, dismissing the case instead on the debtor's motion.

Moreover, Coates & Lane never urged the bankruptcy court to

dismiss the adversary proceeding on the basis that the underlying bankruptcy case was filed in bad faith. Instead, it permitted the matter to go to a full trial, and a proposed ruling to be issued by the bankruptcy court. Too late, it only now raises the issue of bad faith when it suits its purposes of securing delay and having a second bite at the apple in another forum.

In any event, the allegations of bad faith based on ineligibility for chapter 13 relief were only made upon the re-conversion of the case to chapter 13, long after the adversary proceeding had been tried and long after the bankruptcy court issued its proposed ruling. The adversary proceeding had been commenced and tried while the case was in chapter 11, a chapter in which the debtor clearly was eligible for relief under 11 U.S.C. § 109(e) which does not impose debt limits or a requirement of a regular income.[7] No one ever suggested during the pendency of the case in chapter 11 that the case was filed or being pursued in bad faith.

Swinson had struggled to attempt to reorganize, and simply ultimately failed in those efforts. Pending the outcome of those unsuccessful efforts, it was not bad faith for Swinson to sue Coates & Lane for a recovery of more than $70,000 from Coates & Lane: had that amount been collected early on, it might well have

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[7] For example, a pure liquidation plan may be confirmed in chapter 11, whereas a debtor without regular income may not utilize chapter 13 to pursue a liquidating plan.

brought her reorganization efforts closer to success.

D.

Coates & Lane argues that it is unfair for the debtor to continue litigating her claims against Coates & Lane in the bankruptcy court after having obtained a dismissal of the case and after subjecting creditors to the automatic stay without any distribution being made to creditors. No cited decision supports that view, although the dissenting opinion in Morris, 950 F.2d at 1540, hints at a somewhat similar view by stating that the majority's opinion "would not be so egregious if the majority coupled its holding with the requirement that the main proceeding be reopened to permit payment of Morris' creditors from the proceeds of any final judgment obtained by Morris."

Coates & Lane's argument misses the crucial point that Swinson's claims still exist and can be pursued, with the crucial question being where those claims ought to be adjudicated, in the federal court where they have already been tried and which has discretion to retain jurisdiction, or in the state court where the litigation would have to start all over. The interests of Swinson and her creditors is in a prompt disposition of the claims.

Coates & Lane's lacks standing to raise rights of the affected creditors. Coates & Lane, the target of Swinson's claims, seeks a delay (by forcing the litigation to start anew in

state court) and a second bite at the apple that inure to its interests but that will prejudice creditors who might look to collections by Swinson from Coates & Lane as a source for Swinson to pay them.

Moreover, because the bankruptcy case did not commence in chapter 13, the debtor had no absolute right to dismissal. See 11 U.S.C. § 1307(b). Accordingly, those affected creditors who were monitoring the case could have objected to a conversion to chapter 7. None did.[8] Coates & Lane ought not be permitted to raise a fairness argument that the creditors did not see fit to raise.[9]

Swinson's bankruptcy case was pending for more than three years in which she struggled to attempt to reorganize. Swinson's case was filled with numerous other proceedings besides the Coates & Lane proceeding. Inevitably, not all bankruptcy cases succeed, and this one had to be dismissed. It was only a fluke that her claims against Coates & Lane had not been fully adjudicated prior to the dismissal. There is no evidence that the filing of the case, the pursuit of the claims against Coates

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[8] If Swinson now makes a recovery from Coates & Lane, any creditors having judgments against Swinson can execute on Coates & Lane, and even if a creditor has no judgment it can pursue an involuntary bankruptcy petition against Swinson.

[9] Some of Swinson's creditors held secured claims, and thus might have favored dismissal of the bankruptcy case as they could pursue their collateral outside bankruptcy.

& Lane, and the acquiescence in dismissal of the case were somehow an attempt to manipulate the system.

E.

Coates & Lane points to Swinson's failure to advise the district court of the dismissal of her bankruptcy case as evidence of bad faith warranting dismissing this adversary proceeding and forcing her to start all over in a state court. However, as already noted, the district court continued to have jurisdiction after dismissal of the bankruptcy case, and the case and the proceeding are separate matters. Although the district court had discretion to decide whether to continue to retain jurisdiction, Swinson would not have seen any need to advise the district court of the dismissal of the bankruptcy case as she would have viewed retention as a foregone conclusion: it would be an abuse of discretion for the district court to dismiss the adversary proceeding after it was already tried. Moreover, given our adversarial system of justice, Swinson was entitled to protect her interests, and thus had a basis for viewing herself as under no obligation to notify the district court that the underlying bankruptcy case had been dismissed.[10] She was thus

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[10] Jurisdiction existed, such that it is only a question of whether the district court should relinquish jurisdiction in the exercise of its discretion once it learns of the dismissal of the underlying bankruptcy case, and it was not in Swinson's interests unnecessarily to inject an issue into the case and thereby suggest that it might have some impact on the outcome. That having been said, there is an argument that Swinson was under an

not guilty of bad faith, and could view the issue as one that her adversary could raise if it saw fit. Moreover, she may have assumed that the bankruptcy court would advise the district court of the dismissal of the bankruptcy case.

Coates & Lane could have brought the dismissal to the district court's attention, but it had failed to take steps to place itself on the mailing matrix in the bankruptcy case, or to monitor the bankruptcy case (or deliberately failed to raise the issue if it did monitor the case). Its lack of diligence ought not confer upon it a right to secure a dismissal of the adversary proceeding that would otherwise be an abuse of discretion.

Even if Swinson could be faulted, two wrongs do not make a right: because the adversary proceeding would not have been dismissed had she brought the dismissal of the bankruptcy case to the district court's immediate attention, it ought not be dismissed as solely a punitive matter based on her failure immediately to alert the district court.

F.

Coates & Lane notes that the bankruptcy court dismissed a motion for relief from the automatic stay as moot based on the

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obligation to advise the district court of the dismissal of the bankruptcy case. The decisions on retention view dismissal of the underlying bankruptcy case as normally requiring dismissal of the related proceeding. As an officer of the court, Swinson's attorney arguably had an obligation to notify the district court so that it could determine whether the normal rule should apply.

dismissal of the underlying bankruptcy case. The suggestion that Coates & Lane leaves hanging in the air, without expressly articulating it, is that the adversary proceeding should similarly be dismissed as moot. The reason the bankruptcy court dismissed the motion for relief from the automatic stay of 11 U.S.C. § 362(a) as moot is because the automatic stay terminated upon dismissal of the bankruptcy case. 11 U.S.C. § 362(c).[11] In contrast, Swinson's claims against Coates & Lane were not terminated by the dismissal and plainly are not moot. The claims did not depend on the bankruptcy case for their existence.

G.

Coates & Lane finally attempts to distinguish this case from three of the decisions upholding discretionary retention, but the differences are merely inconsequential factual differences.

First, Coates & Lange emphasizes that the proceeding here was a non-core proceeding, and attempts on that basis to distinguish this case from Carraher, Morris, and Smith.[12] This argument must fail for two reasons. First, the distinction is

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[11] The dismissal of the case re-vests the property of the estate in the debtor under 11 U.S.C. § 349(b)(3), thus terminating, pursuant to § 362(c)(1), the stay under § 362(a) of an act against property of the estate. The dismissal terminates, pursuant to § 362(c)(2)(B), the stay under § 362(a) of any other acts.

[12] Because Coates & Lane asserted a counterclaim, it is not at all clear that this was a non-core proceeding, although the parties and the court treated it as such. See Iridium Operating LLC, 285 B.R. at 831-32.

meaningless. Continuing upon dismissal of the underlying bankruptcy case to adjudicate a purely state law claim turns on the same discretionary factors, whether the claim is core or non-core.[13] Second, the argument is erroneous, as Carraher, Morris, and Smith each involved a non-core proceeding brought by a debtor to recover against another party,[14] precisely what Swinson sought to do here.[15]

Second, Coates & Lane argues that in Carraher the bankruptcy court retained jurisdiction over only the claims that could be dismissed on the clear issue of res judicata, but that does not

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[13] Once a bankruptcy case is dismissed, even a core proceeding may be subject to dismissal based on the exercise of discretion. For example, an objection to a state law claim against the estate plainly is a core matter because the claim is against the *res* administered by the bankruptcy court, see 28 U.S.C. § 157(b)(2)(B), but if the *res* is re-vested in the debtor pursuant to 11 U.S.C. § 349(b)(3) by reason of dismissal of the bankruptcy case, the original basis for jurisdiction no longer exists. See Porges, 44 F.3d at 161 (original basis for jurisdiction over an adversary proceeding objecting to a claim under 11 U.S.C. § 502(b) ceased to exist once the bankruptcy case was dismissed).

[14] See Carraher, 971 F.2d at 327 (debtor pursued fraud claims); Morris, 950 F.2d at 1533 (debtor pursued claim for unpaid retainage); Smith, 866 F.2d at 578 (debtor pursued damage claims under consumer protection statutes).

[15] Coates & Lane seizes on the fact that in Carraher, Morris, and Smith, the bankruptcy court issued a final judgment, presumably pursuant to the parties' consent under 28 U.S.C. § 157(c)(2), instead of a proposed ruling for de novo consideration by the district court under 28 U.S.C. § 157(c)(1). However, the method of review by the district court of a non-core proceeding would not make the proceeding a core proceeding.

alter the fact that retention of jurisdiction turns on the exercise of discretion, which requires retention here because the claims were already tried.

Third, Coates & Lane distinguishes Smith on the basis that it involved a four-year history and prior related proceedings, and Morris on the basis that the proceeding there had been pending for four years. However, here the proceeding not only already has a two-year plus history, but also a completed trial (in contrast to Smith and Morris where the trial had not been completed when discretion was exercised to retain jurisdiction), making it an even more appropriate case for retaining jurisdiction.

Fourth, Coates & Lane argues that in Smith the debtor received a discharge, whereas Swinson never did. This is a red herring. The appellee in Smith (against whom the debtor Smith had pursued her claims) urged that a discharge removed any basis that had previously existed for "related to" jurisdiction under 28 U.S.C. § 1334 (previously 28 U.S.C. § 1471), just as a dismissal does. The court of appeals, which assumed that to be

the case without deciding,[16] simply addressed the effect of the loss of a claim's previous "related to" character, applying decisions addressing retention of jurisdiction over related proceedings after dismissal of the underlying bankruptcy case. The decision in no way pointed to a discharge (versus a dismissal) as a plus factor in favor of retention of jurisdiction.

V

Based on the foregoing, the court concludes that dismissal of this adversary proceeding based on dismissal of the underlying

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[16] To explain in greater depth, when the debtor Smith brought her claims in chapter 13, they were "related to" claims under what is now 28 U.S.C. § 1334(b) because they would have affected the moneys available to the debtor to fund a chapter 13 plan. However, when the case was converted to chapter 7, the claims lost their "related to" character. The claims apparently had either become exempted from the estate under 11 U.S.C. § 522(l) or abandoned from the estate under 11 U.S.C. § 554: there is no indication that the chapter 7 trustee stepped in upon conversion to attempt to pursue the claims (in which event they would have remained "related to" claims as a possible source of a dividend for creditors even after the debtor's receipt of a discharge).

The discharge was irrelevant to the claims ceasing to be "related to" claims. However, Fidelity, the appellee in Smith, erroneously viewed discharge as the magical moment at which the damage claims no longer were related to the case, apparently reasoning that the discharge concluded the bankruptcy case by leaving no matters before the bankruptcy court of a core nature to which the damage claims could relate. See Smith, 866 F.2d at 580 n.4.

bankruptcy case would be an abuse of discretion.

Dated: July 27, 2004.

S. Martin Teel, Jr.
United States Bankruptcy Judge

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The Honorable Reggie B. Walton
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